

OVERVIEW OF SELECTED CHANGES

CHAPTER 7 AND CHAPTER 13 FILING RESTRICTIONS

- § 727(a)(8) extends the time between filing Chapter 7 cases to 8 years.
- § 1328(f) bars a Chapter 13 discharge if the debtor has received a discharge—
 - in a case filed under chapter 7, 11, or 12 *during the 4-year period* preceding the petition date, or
 - in a case filed under chapter 13 *during the 2-year period* preceding petition date.

DEBTOR'S DUTIES

FILING REQUIREMENTS

- § 521(a)(1)(B) requires all debtors to file:
 - payment advices received from any employer within 60 days before the petition date;¹
 - an itemized statement of net monthly income;²
 - a statement disclosing any anticipated increase in income or expenses during the next 12 months;³ and
 - a § 342(b) notice of alternatives certificate.⁴

AUTOMATIC DISMISSAL FOR FAILURE TO FILE REQUIRED DOCUMENTS

- Failure to provide any information required under § 521(a)(1) within 45 days after the

¹ 11 U.S.C. § 521(a)(1)(B)(iv).

² 11 U.S.C. § 521(a)(1)(B)(v).

³ 11 U.S.C. § 521(a)(1)(B)(vi).

⁴ 11 U.S.C. § 521(a)(1)(B)(iii)(I),(II).

petition date results in automatic dismissal effective on the 46th day.⁵

- The court must enter an order of dismissal within 5 days of a request by a party in interest for failure to file required documents within the 45 day period.⁶

EXCEPTIONS

- The court may enter an order extending the time for an additional 45 days upon motion filed during the initial 45 day period.⁷
- The court may decline to dismiss for failure to file payment advices upon finding the debtor attempted in good faith to file same.⁸

STATEMENT OF INTENTION

- Must be filed within 30 days after the petition date.⁹
- Debtors must perform their stated intention within *30 days after the first date set for the meeting of creditors*.¹⁰
- § 521(a)(6) requires Chapter 7 debtors no later than *45 days after the first meeting of creditors* to either surrender, reaffirm, or redeem personal property secured by a PMSI.
- The stay lifts under § 362(h) as to personal property securing an obligation or subject to a lease if the debtor fails to file the statement of intention and timely perform the stated intention with respect to the property.
- The trustee may file a motion to enforce the stay before the end of the 45 day period.¹¹

⁵ 11 U.S.C. § 521(i)(1).

⁶ 11 U.S.C. § 521(i)(2).

⁷ 11 U.S.C. § 521(i)(3).

⁸ 11 U.S.C. § 521(i)(4).

⁹ 11 U.S.C. § 521(a)(2)(A).

¹⁰ 11 U.S.C. § 521(a)(2)(B).

¹¹ 11 U.S.C. § 521(a)(6).

- The court may grant the motion only if it determines that the property is of consequential value, order adequate protection, and orders the debtor to deliver the property to the trustee.
- The 30 day time period under § 521(a)(2)(B) for performing the debtor's stated intention with respect to all secured debts conflicts with the 45 day time period in § 521(a)(6) for performing the debtor's stated intention with respect to collateral securing a PMSI.

TAX RETURNS

- Seven days before the first date set for the § 341 meeting, the debtor must provide the trustee and any creditor that timely request same with a copy of the debtor's federal tax return or a transcript for the most recent tax year ending immediately before the petition date.¹²
 - Failure to provide same will result in dismissal of the debtor's case unless the debtor is able to demonstrate that the failure was due to circumstances beyond the debtor's control.¹³
- Upon request, individual Chapter 7, 11 and 13 debtors are required to file: (1) a copy of returns or transcripts for post-petition tax years filed while the case is pending, (2) a copy of returns or transcripts for pre-petition tax years that are filed while the case is pending, and (3) amendments.¹⁴
- The taxing authority may request an order converting or dismissing a case if the debtor fails to file a return when due or to obtain an extension of the time for doing so.¹⁵ The court must grant the motion if the debtor fails to comply within 90 days after the request is filed.
- In Chapter 13 cases, all pre-petition tax returns due within four years of the petition date must be filed with the appropriate taxing authority before the first date set for the § 341 meeting.¹⁶ The trustee may hold the meeting open for a limited time period to allow the debtor additional time to comply.¹⁷

¹² 11 U.S.C. § 521(e)(2)(A).

¹³ 11 U.S.C. § 521(e)(2)(B), (C).

¹⁴ 11 U.S.C. § 521(f)(1), (2) and (3).

¹⁵ 11 U.S.C. § 521(j)(1) and (2).

¹⁶ 11 U.S.C. § 1308(a).

¹⁷ 11 U.S.C. § 1308(b)(1).

- not more than 120 days after the § 341 meeting if return is past due,
- until the later of 120 days after the § 341 meeting or the date upon which the return is due under the last extension date timely requested by the debtor under nonbankruptcy law if the return is not past due.
- § 1308(b)(2) allows the court to extend the time for complying for an additional 30 days if the failure was due to circumstances beyond the debtor's control.

MISCELLANEOUS FILING REQUIREMENTS

- Credit counseling certification and copy of the debt repayment plan, if any, developed through an approved credit counseling agency.¹⁸
- Record of the debtor's interest in a state tuition program or education individual retirement account.¹⁹
- Chapter 13 debtors must file, upon request, post-petition annual reports that show the debtor's income and expenditures for the tax year.²⁰
- If requested by the trustee, debtors must establish their identity with a photo id.²¹

MANDATORY CREDIT COUNSELING

- Individual debtors must receive an individual or group briefing from an approved nonprofit budget and credit counseling agency during the 180 day period preceding the petition date.²²
- The briefing may be conducted by telephone or over the internet. The briefing must outline the debtor's opportunities for credit counseling and assist the debtor in performing a budget analysis.

¹⁸ 11 U.S.C. § 521(b)(1),(2).

¹⁹ 11 U.S.C. § 521(c).

²⁰ 11 U.S.C. § 521(f)(4).

²¹ 11 U.S.C. § 521(h).

²² 11 U.S.C. § 109(h)(1).

- The clerk of the court will maintain a list of approved credit counseling agencies.²³
- The U.S. trustee and bankruptcy administrator are responsible for overseeing and approving nonprofit credit counseling agencies.
- A debtor that fails to obtain credit counseling is not eligible to file bankruptcy unless:
 - the debtor resides in a district where approved agencies are not reasonably able to provide counseling services to additional individuals;²⁴
 - the debtor is unable to comply because of “incapacity, disability, or active military duty in a military combat zone;”²⁵ or
 - the debtor requests a waiver of the credit counseling requirement based on exigent circumstances.²⁶
 - The waiver expires 30 days after the debtor files the petition unless the court grants an additional 15 days.²⁷
- The debtor must file a certificate with the petition from an approved credit counseling agency that describes the services provided and a copy of any debt repayment plan developed by the agency.²⁸

DEBTOR EDUCATION

- § 727(a)(11) and § 1328(g) bar a debtor’s discharge unless the debtor completes a post-petition instructional course on personal financial management. Debtor’s must file a form certifying that they have completed the instructional course as a condition of receiving a discharge.
- The bar to discharge does not apply if the debtor is unable to comply because of incapacity, disability, or active military duty in a military combat zone as described in § 109(h)(4).

²³ 11 U.S.C. § 111(a).

²⁴ 11 U.S.C. § 109(h)((2)(A).

²⁵ 11 U.S.C. § 109(h)(4).

²⁶ 11 U.S.C. § 109(h)(3)(A).

²⁷ 11 U.S.C. § 109(h)(3)(B).

²⁸ 11 U.S.C. § 521(b)(1), (2).

- The amendments require the approved instructional course to provide debtors with “learning materials and teaching methodologies designed to assist debtors in understanding personal financial management”²⁹

NOTICE REQUIREMENTS

- Under § 342(c), the debtor must use any address and account number provided by a creditor in two communications within the 90 day period before the petition date.³⁰
- Under § 342(e), a creditor may file with the court and serve the debtor with a notice of the creditor’s preferred address. Five days after the court and debtor receive the notice, any further notice to the creditor must be provided to the preferred address.
- Under § 342(f)(1), a creditor may provide all bankruptcy courts or a particular court with an address at which it desires to receive Chapter 7 and 13 notices. Future notices must be sent to this address effective 30 days after the notice is filed.
- Notice under subsection (e) supersedes the notice requirement in subsection (f).
- Notice provided other than in accordance with § 342 is not effective until the notice is actually brought to the attention of the creditor.³¹
- No monetary penalty may be assessed for stay violations if notice is not effective.³²

AUTOMATIC STAY: AUTOMATIC DISMISSALS

DOMESTIC RELATIONS EXCEPTIONS: § 362(b)(2)

- child custody, visitation, and domestic violence actions;³³
- divorce proceedings except to the extent that they seek to divide property that is property

²⁹ 11 U.S.C. § 111(d)(1)(B).

³⁰ 11 U.S.C. § 342(c)(2)(A).

³¹ 11 U.S.C. § 342(g)(1).

³² 11 U.S.C. § 342(g)(2).

³³ 11 U.S.C. § 362(b)(2)(A)(iii), (v).

of the estate;³⁴

- acts withholding income that is property of the estate for the payment of domestic support obligations;³⁵
- acts withholding a debtor's drivers license or a professional license;³⁶
- the reporting of overdue child support;³⁷
- the interception of a tax refund to satisfy a support obligation;³⁸ and
- the enforcement of medial obligations as specified under the Social Security Act.³⁹

PENSION LOAN EXCEPTION

- withholding of income from a debtor's wages to repay a loan from an ERISA qualified pension plan sponsored by the debtor's employer.⁴⁰

IN REM EXCEPTION

- any act to enforce a lien against real property as to which the court lifted the stay in a prior case under § 362(d)(4) for a period of 2 years after the date of the entry of such order.⁴¹

EVICITION ACTIONS

- **Prepetition residential eviction judgment exception:**⁴²
 - Exception is not effective until 30 days after the petition is filed if the debtor files a certificate with the petition and serves same on the lessor stating that nonbankruptcy law would allow the debtor to cure the entire default; and the debtor deposits with the clerk

³⁴ 11 U.S.C. § 362(b)(2)(A)(iv).

³⁵ 11 U.S.C. § 362(b)(2)(C).

³⁶ 11 U.S.C. § 362(b)(2)(D).

³⁷ 11 U.S.C. § 362(b)(2)(E).

³⁸ 11 U.S.C. § 362(b)(2)(F).

³⁹ 11 U.S.C. § 362(b)(2)(G).

⁴⁰ 11 U.S.C. § 362(b)(19).

⁴¹ 11 U.S.C. § 362(b)(20), (d)(4).

⁴² 11 U.S.C. § 362(b)(22).

any rent that would become due during the 30 day period following the filing date.⁴³

- The exception does not apply, unless ordered by the court, if the debtor complies with § 362(l)(1) by filing and serving a further certification that the debtor has cured the entire monetary default.⁴⁴
- If the lessor files an objection to the certification, § 362(l)(3) requires the court to hold a hearing within 10 days to determine if the certification is true.
 - Stay is immediately terminated if the court sustains the lessors objection or the debtor fails to file the certification.
- **Eviction action based on endangerment/controlled substances exception.**⁴⁵
 - The lessor must file a certification that the action has been filed or that the debtor has endangered property or illegally used controlled substances on the property within 30 days preceding the certification date.
 - Exception applies 15 days after the date the lessor files and serves the certification.⁴⁶
 - The court must hold a hearing within 10 days if the debtor files an objection to the certification.

MISCELLANEOUS EXCEPTION TO THE STAY

- Any act to enforce a lien against real property if the debtor is ineligible under § 109(g) to be a debtor or if the debtor filed the case in violation of an order in a prior case prohibiting the debtor from refiling.⁴⁷
- Any transfer that is not avoidable by the trustee under either § 544 or § 549.⁴⁸
- Certain actions taken by a securities self regulatory organization.⁴⁹

⁴³ 11 U.S.C. § 362(l)(1).

⁴⁴ 11 U.S.C. § 362(l)(2).

⁴⁵ 11 U.S.C. § 362(b)(23).

⁴⁶ 11 U.S.C. § 362(m).

⁴⁷ 11 U.S.C. § 362(b)(21).

⁴⁸ 11 U.S.C. § 362(b)(24).

⁴⁹ 11 U.S.C. § 362(b)(25).

- The setoff of an income tax refund for a taxable period ending prior to the order for relief against an income tax liability for a taxable period ending before the order for relief.⁵⁰
- The setoff by a master netting agreement of a mutual debt and claim.⁵¹
- The exclusion of the debtor from participation in medicare or federal health care programs.⁵²

AUTOMATIC STAY DURATION LIMITED

- Under § 362(c)(3), the automatic stay terminates on the 30th day after the petition date in a Chapter 7, 11, or 13 case filed within one year after a prior case was dismissed unless the prior case was dismissed pursuant to § 707(b).⁵³
- The court may extend the stay if the court finds that the debtor filed the new case in good faith.⁵⁴
- A presumption against finding good faith arises –

As to all creditors if:

- the new petition is a second repeat filing during a one year period;⁵⁵
- during the preceding year a prior case was dismissed after the debtor failed to:
 - amend the petition or file required documents without substantial excuse;
 - provide court ordered adequate protection; or
 - perform the terms of a confirmed plan; **OR**
- there has not been a substantial change in the debtor's financial or personal circumstances since the last dismissal, or any other reason to conclude that the

⁵⁰ 11 U.S.C. § 362(b)(26).

⁵¹ 11 U.S.C. § 362(b)(27).

⁵² 11 U.S.C. § 362(b)(28).

⁵³ 11 U.S.C. § 362(c)(3)(A).

⁵⁴ 11 U.S.C. § 362(c)(3)(B).

⁵⁵ 11 U.S.C. § 362(c)(3)(C)(i)(I).

current case will result with a discharge in a Chapter 7 case, or a fully performed confirmed Chapter 13 plan.⁵⁶

As to any creditor:

- who filed a lift stay motion in a previous case if the motion was still pending when the prior case was dismissed or if the motion “had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor.”⁵⁷
- A case will not be presumed to have been filed not in good faith if the previous case was dismissed “due to the creation of a debt repayment plan.”⁵⁸
- Under § 362(c)(4), the automatic stay does not go into effect if the debtor has had two or more cases pending within the previous year that were dismissed “other than a case refiled under section 707(b) . . .”
- The court may impose the stay upon finding the new case was filed in good faith.⁵⁹
- A presumption against finding good faith arises under § 362(c)(4)(D) similar to the presumption outlined under § 362(c)(3)(C).

DAMAGES

- § 362(k)(1) provides for punitive damages for any willful violation of the stay.
- Damages are limited to actual damages under § 362(k)(2) if the violation was based on action taken in good faith belief that the stay was terminated under § 362(h) for failure to comply with the statement of intention requirements under § 521(a)(2).
- Monetary damages may not be imposed on a creditor for violating the stay under § 362(a), including monetary penalties imposed under § 362(k), unless the violation occurs after the creditor receives notice as required by § 342.

IN REM RELIEF

⁵⁶ 11 U.S.C. § 362(c)(3)(C)(i)(II),(III).

⁵⁷ 11 U.S.C. § 362(c)(3)(C)(ii).

⁵⁸ 11 U.S.C. § 362(i).

⁵⁹ 11 U.S.C. § 362(c)(4)(B).

- The court may enter an in rem order, which if properly recorded, is binding on owners of the subject property for two years from the date of entry.⁶⁰

HOUSEHOLD GOODS DEFINED

- Section 522(f)(4) defines the term household goods for purposes of § 522(f)(1)(B) to include: clothing; furniture; appliances; 1 radio, television and VCR; linens; china; crockery; kitchenware; educational material; medical equipment and supplies; personal effects (including the toys and hobby equipment of minor dependent children and wedding rings); and; 1 personal computer and related equipment.
- Excluded are works of art; electronic equipment with an aggregate value of more than \$500 except 1 television, radio and VCR; antiques with an aggregate value of more than \$500; jewelry exceeding \$500 exclusive of a debtor's wedding ring; a computer except as otherwise provided for above; and motorized devices including vehicles, tractors, lawn tractors, boats, recreational vehicles, watercrafts and aircrafts.⁶¹

AVOIDANCE OF TRANSFERS TO SELF-SETTLED TRUSTS

- § 548(e)(1) allows the trustee to avoid any transfer of property that was made on or within 10 years before the petition date if:
 - the debtor made the transfer to a self-settled trust,
 - the debtor is the beneficiary of the trust, and
 - the debtor made the transfer “with actual intent to hinder, delay or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.”

EXCLUSIONS FROM PROPERTY OF THE ESTATE

- funds placed in an education retirement account or state tuition credit account at least 365 days prior to the petition date if the funds are designated for the benefit of the debtor's child, stepchild, grandchild, or step-grandchild
- \$5,000 limit placed on funds contributed “not earlier than 720 days nor later than 365 days” before the filing date.⁶²
- wages withheld by an employer for payment as contribution to ERISA-qualified retirement

⁶⁰ 11 U.S.C. § 362(d)(4).

⁶¹ 11 U.S.C. § 522(f)(4)(B).

⁶² 11 U.S.C. § 541(b)(5), (6).

plans, deferred compensation plans, tax-deferred annuities, and health insurance plans.⁶³

- Exclusion is for “any amount” withheld from wages.

EXEMPTIONS

RESIDENCY REQUIREMENT

- A debtor must reside in a state for a period of 730 days (2 years) prior to filing bankruptcy under that state’s exemption laws.⁶⁴
- If the debtor’s domicile has been located in more than a single state during the relevant time period, the governing exemption law will be the state in which the debtor’s domicile was located for 180 days immediately preceding the 730 day period “or for a longer portion of such 180 day period than in any other place.”⁶⁵
- The debtor may elect the federal exemptions under § 522(d), if the debtor is ineligible for any exemption based on the residency requirement.

HOMESTEAD EXEMPTION

- The federal homestead exemption is limited to \$18,450.00.⁶⁶
- The state homestead exemption is reduced by the amount the exemption is attributable to any property disposed of by the debtor during the 10-year look-back period if done with intent to hinder, delay or defraud a creditor.⁶⁷
- State homestead exemptions may not exceed \$125,000 if the debtor’s interest was acquired during the 1215 day period (3 1/3 years) preceding the petition date.⁶⁸
 - The cap does not apply if: (1) the debtor acquired the homestead interest from the debtor’s previous residence; (2) the debtor’s previous residence and current residence are

⁶³ 11 U.S.C. § 541(b)(7).

⁶⁴ 11 U.S.C. § 522(b)(3)(A).

⁶⁵ 11 U.S.C. § 522(b)(3).

⁶⁶ 11 U.S.C. § 522(d).

⁶⁷ 11 U.S.C. § 522(o).

⁶⁸ 11 U.S.C. § 522(p)(1).

located in the same state; and (3) the debtor acquired the previous residence prior to the beginning of the 1215 day period.⁶⁹

- State homestead exemption is capped at \$125,000 regardless of when the debtor acquired the interest if: (1) the debtor has been convicted of a felony that demonstrates that the filing of the case was an abuse of the Bankruptcy Code; or (2) the debtor owes a debt arising from the violation of securities laws, criminal acts, intentional torts, or reckless misconduct that caused serious physical injury or death within five years preceding the bankruptcy filing.⁷⁰
- The cap does not apply to the extent the property is “reasonably necessary” for the debtor’s support.⁷¹

DISCHARGEABILITY

CREDIT CARD DEBTS

- Consumer debts owed to a single creditor for more than \$500 for luxury goods incurred within 90 days of filing.⁷²
- Cash advances for more than \$750 within 70 days of filing.
- Luxury goods are defined to exclude goods and services reasonably necessary for support or maintenance.⁷³

STUDENT LOAN DEBTS

- § 523(a)(8) expands the definition of student loans to include loans on which interest paid is deductible for tax purposes.

PROPERTY SETTLEMENTS

- § 523(a)(15) is expanded so that all non-support marital property settlements are excepted from discharge.

PRIORITY

⁶⁹ 11 U.S.C. § 522(p)(2)(B).

⁷⁰ 11 U.S.C. § 522(q)(1).

⁷¹ 11 U.S.C. § 522(q)(2).

⁷² 11 U.S.C. § 523(a)(2)(C).

⁷³ 11 U.S.C. § 523(a)(2)(C)(ii)(II).

- First priority is accorded to domestic support obligations owed to the debtor, a child of the debtor, and governmental units.⁷⁴
- Tenth priority is accorded to claims for death or personal injury incurred by the debtor while driving under the influence of drugs or alcohol.

SELECTED CHANGES AFFECTING CHAPTER 7 CASES

MEANS TESTING: § 707(b)

- Annualized combined monthly income equals or falls below applicable median family income – Means test does not apply.⁷⁵
- Combined income is used at the front under § 707(b)(7) to determine whether the means test applies.
- Annualized combined monthly income exceeds applicable median family income –
 - For married debtors not filing jointly, adjust income to exclude income not regularly contributed to household expenses by the non-filing spouse,
 - Subtract deductions allowed under § 707(b)(2),
 - Multiply by 60 . . .
 - If the debtor's 60-month disposable income is less than \$6,000, presumption to not arise;
 - Greater than \$10,000, presumption arises;
 - At least \$6,000 but not more than \$10,000, calculate whether the debtor's 60 month disposable income is less than 25% of the debtor's total unsecured debt.

CURRENT MONTHLY INCOME

- Defined in § 101(10A)(A) as average monthly income received by the debtor and debtor's spouse in a joint case during the six month period prior to the petition date.

⁷⁴ 11 U.S.C. § 507(a)(1)(C).

⁷⁵ 11 U.S.C. § 707(b)(7).

- Includes any amount paid from any source on a regular basis for household expenses.
- Excludes Social Security benefits.

MONTHLY EXPENSES

- Deductions are set forth in § 707(b)(2)(A)(ii), (iii) and (iv).
- Deductions allowed under § 707(b)(2)(A)(ii) are based on IRS collection standards. The deductions include: National Standards for food, clothing, household supplies, personal care, and miscellaneous; Local Standards for housing and utilities, Local Standards for transportation and vehicle operation; Local Standards for transportation ownership and lease expenses; and Other Necessary Expenses issued by the IRS for taxes, mandatory payroll deductions, life insurance, court-ordered payments, certain education expenses, childcare, health care, and telecommunication expenses.
- Amounts deducted for housing and transportation must be reduced by the amount that the IRS housing and transportation allowances include or reflect payments for secured debts.⁷⁶
- Deductions allowed under § 707(b)(2)(A)(ii) include health insurance, disability insurance, health savings account expenses; actual expenses incurred for the support of elderly or chronically ill household or family members; expenses incurred for protection against family violence; documented utility expenses in excess of the IRS allowance; actual education expenses for dependent children up to \$125 per child; additional food and clothing expenses up to 5%; and continued charitable contributions.
- Deductions allowed under § 707(b)(2)(A)(iii) and (iv) include monthly secured debt payments and priority claims. Secured claim payments are calculated based on the total of all amounts due to secured creditors during the 60 months following the petition date, divided by 60. If the debtor is in default on secured payments on the petition date, divide the pre-petition arrearage by 60 to deduct past due payments on secured claims. Divide total priority claims by 60 and deduct same. If the debtor is eligible to file a Chapter 13 case, Chapter 13 administrative expenses are also deducted.

PROCEDURE

- § 341 notice will include 10 day notice the clerk is required to send stating whether there is

⁷⁶ See the proviso in § 707(b)(2)(A)(ii)(I) that “[n]otwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.”

a presumption of abuse or that the proper forms have not been filed to determine whether abuse is presumed.

- Not later than 10 days after the conclusion of the § 341 meeting, the bankruptcy administrator will file a statement with the court if there is a presumption of abuse.⁷⁷
- Not later than 5 days after the BA files the notice, the clerk will provide a copy of the statement to all creditors.⁷⁸
- Not later than 30 days after the BA files the presumption of abuse notice, the BA is required by § 704(b)(2) to file a motion to dismiss or convert under § 707(b), or file a statement why the BA does not consider such motion to be appropriate.

Standing: Safe Harbor Provisions

- No one has standing to file a motion to dismiss based on the means test presumption, if the debtor's income and the combined income of the debtor's spouse does not exceed the applicable state median income.⁷⁹
- In Alabama, the applicable median family income in 2004 inflation adjusted dollars is \$32,762 for 1 earner, \$39,755 for 2 people, \$48,957 for 3 people, and \$54,338 for 4 people. See www.usdoj.gov/ust/. For each individual in excess of four, add \$6,300.00.
- If the debtor's income, or in a joint case the combined income of the debtor and the debtor's spouse, does not exceed the applicable state median income, standing to file a motion to dismiss on the grounds of abuse under § 707(b)(1) is limited to the court, U.S. trustee, and bankruptcy administrator.⁸⁰
- Disabled veterans are exempt from the means test if the veteran's debts were incurred while on active duty or performing a homeland defense activity.⁸¹

ATTORNEY SANCTIONS

⁷⁷ 11 U.S.C. § 704(b)(1)(A).

⁷⁸ 11 U.S.C. § 704(b)(1)(B).

⁷⁹ 11 U.S.C. § 707(b)(7).

⁸⁰ 11 U.S.C. § 707(b)(6).

⁸¹ 11 U.S.C. § 707(b)(2)(D).

- The court may order the debtor’s attorney to reimburse the trustee for costs, attorneys’ fees, and civil penalties for filing a motion to dismiss or convert under § 707(b) if: (1) the court granted the motion; and (2) the court finds that the attorney violated Rule 9011 in filing the case.⁸²
- The debtor’s attorney is charged under § 707(b)(4)(C) with the duty to perform a “reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion” signed by the attorney.
- Under § 707(b)(4)(C)(ii), the attorney’s signature constitutes a certification that the petition, pleading, or written motion is well grounded in fact and warranted by existing law or good faith argument for altering the law.
- The attorney’s signature is a certification that the attorney “has no knowledge after an inquiry that the information in the schedules filed with” the petition is incorrect.⁸³
- If a party in interest, other than the trustee, files a motion under § 707(b) and the court does not grant the motion, the court may award the debtor all reasonable costs in contesting the motion upon finding that the party violated Rule 9011.⁸⁴
- The court may award the debtor costs if (1) the attorney who filed the § 707(b) motion did not perform a reasonable investigation giving rise to the motion and determine that the motion was well grounded in fact and by existing law; and (2) the movant violated Rule 9011; and (3) the court finds that the motion was made to coerce a debtor into waiving a right guaranteed by the Bankruptcy Code.
- A small business creditor with a claim that is less than \$1,000.00 is not liable for sanctions under § 707(b)(5)(A)(ii)(I).

REAFFIRMATION AGREEMENTS

- § 524(k) details new disclosures that creditors must make before a debt may be reaffirmed.
- § 524(k)(6) requires the debtor to file a statement in support of the reaffirmation agreement that calculates the balance remaining to make the required payments on the reaffirmed debt after the debtor subtracts total monthly expenses, including payments on post-bankruptcy debt and other reaffirmed debt, from current monthly income.

⁸² 11 U.S.C. § 707(b)(4)(A), (B).

⁸³ 11 U.S.C. § 707(b)(4)(D).

⁸⁴ 11 U.S.C. § 707(b)(5)(A)(i), (ii).

- Debtor must affirm payments will not be an undue hardship.
- § 524(k)(6) requires the debtor's attorney to certify that the agreement represents a fully informed and voluntary agreement, that same will not impose an undue hardship, and that the attorney advised the debtor of the legal consequences.
- The debtor must receive the § 524(k) disclosures either at or before the time the debtor signs the reaffirmation agreement.⁸⁵
- A presumption of undue hardship arises for a period of 60 days if the debtor's income less expenses will not satisfy the reaffirmation payments.⁸⁶
- The debtor may overcome the presumption, if the debtor is able to explain to the satisfaction of the court in writing how the debtor will be able to make the payments.⁸⁷
 - Under § 524(m)(2), credit unions are exempt from this subsection.
- Under § 524(l)(1) and (2), creditors may accept payments from a debtor –
 - before and after the filing of a reaffirmation agreement, and
 - under such agreement that the creditor believes in good faith to be effective.
- Good faith is established if the disclosure requirements are satisfied.

REDEMPTION AND VALUATION ISSUES

- The debtor must pay the full amount of an allowed secured claim at the time of redemption.
- Under § 506(a)(2), the amount of an allowed secured claim equals the replacement value of the collateral *as of the petition date*.
 - Do not take a deduction for the cost of sale or marketing.
- For consumer goods value is defined as the price a retail merchant would charge for the

⁸⁵ 11 U.S.C. § 524(c)(2).

⁸⁶ 11 U.S.C. § 524(m)(1).

⁸⁷ 11 U.S.C. § 524(m)(1).

property “*at the time value is determined.*”⁸⁸

SELECTED CHANGES AFFECTING CHAPTER 13 CASES

CONFIRMATION HEARING

- Confirmation hearings must be held not earlier than 20 days and not later than 45 days “after the date of the meeting of creditors.”⁸⁹
- May be held earlier if there no objection to shortened hearing date.

LENGTH OF PLAN

PLAN CONTENTS

- If the debtor’s annualized combined current monthly income is . . .
 - greater than the median family income, the plan may not exceed five years.⁹⁰
 - less than the median family income, the plan may not exceed three years, unless the court approves a longer time period not to exceed five years.⁹¹
 -

PLAN CONFIRMATION

- If the trustee or an unsecured creditor objects, all of the debtor’s disposable income must be applied to payments to unsecured creditors during the “applicable commitment period.”⁹²

⁸⁸ 11 U.S.C. § 506(a)(2).

⁸⁹ 11 U.S.C. § 1324(b).

⁹⁰ 11 U.S.C. § 1322(d)(1).

⁹¹ 11 U.S.C. § 1322(d)(2).

⁹² 11 U.S.C. § 1325(b)(1).

- § 1325(b)(4) defines the term “applicable commitment period” as: (i) 3 years; (ii) not less than 5 years if the debtor’s combined current monthly income is greater than the applicable state median family income; or (iii) a period that is less than the applicable period, if the plan provides for full payment of all allowed unsecured claims.

DISPOSABLE INCOME

- Defined as the debtor’s current monthly income, less child support, reasonably necessary expenses for maintenance or support, charitable contributions, and business expenses.⁹³
- Expenses must be determined using the means test deductions if the debtor’s current monthly income, when multiplied by 12, is greater than the applicable state median income.⁹⁴

SECURED CLAIMS

- Plan must provide that a secured creditor will:
 - retain its lien until the debt is paid or the court enters the Chapter 13 discharge order;
 - receive payments with a present value as of the effective date of the plan of not less than the allowed amount of the secured claim; and
 - plan payments must be in equal monthly payments;
 - if the creditor is secured by personal property, the payments must adequately protect the creditor’s interest during the plan.⁹⁵
- § 1325(a)(5)(B)(i) prohibits the release of a lien upon the payment of a stripped-down secured claim.
- § 1325(a) prohibits the strip down of –
 - a PMSI in a motor vehicle purchased within 910 days prior to the petition date; and
 - all other PMSI incurred in a 1 year period.

ADEQUATE PROTECTION PAYMENTS

- § 1326(a)(1) requires the debtor to commence preconfirmation adequate protection payments no later than 30 days after the petition date.
- § 1326(a)(1)(A) requires the debtor to commence plan payments within 30 days.

⁹³ 11 U.S.C. § 1325(b)(2).

⁹⁴ 11 U.S.C. § 1325(b)(3).

⁹⁵ 11 U.S.C. § 1325(a)(5)(B).

- § 1326(a)(1)(C) allows the debtor to reduce the plan payments by the amount of adequate protection payments paid directly to secured creditors.
- § 1326(a)(1)(B) requires the debtor to commence lease payments no later than 30 days after the petition date.

THE CHAPTER 13 DISCHARGE

- § 1328(a)(1) excepts tax debts of the kind described in § 507(a)(8)(C) and § 523(a)(1)(B), (C) for unfiled, late-filed, and fraudulent tax returns.
- § 1328(a)(2) excepts debts of the kind specified in § 523(a)(2), (3), and (4) for fraud, failure to notify creditors of the bankruptcy petition, and breach of fiduciary duty.
- § 1328(a)(4) excepts debts “for restitution, or damages, awarded in a civil action against the debtor as a result of willful *or* malicious injury by the debtor that caused personal injury . . .” Applies to debts for restitution or damages *awarded in a civil action* against the debtor.
- § 1322(b)(10) allows the debtor to make interest payments accruing on unsecured claims that are nondischargeable under § 1328(a), but only to the “extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims.”

PLAN TREATMENT OF CERTAIN LOANS AND OBLIGATIONS

PENSION AND PROFIT SHARING LOANS

- A Chapter 13 plan may not materially alter the terms of a loan described in § 362(b)(19).
- § 362(b)(19) excepts from the stay the withholding of income from a debtor’s wages for payments related to loans from pension and profit-sharing plans.⁹⁶
- Any amounts required to pay such pension and profit sharing plan loans do not constitute disposable income under § 1325.

DOMESTIC SUPPORT

- § 1325(a)(8) provides that the plan will not be confirmed unless the debtor has paid all amounts required by order or statute under a domestic support obligation that first become

⁹⁶ 11 U.S.C. § 1322(f).

payable after the petition date.

- The Chapter 13 discharge must be held until all such payments have been satisfied. Failure to make such payments is now grounds under § 1307(c)(11) for converting or dismissing a debtor's case.